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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/656,765	09/07/2000	Jeremy S DeBonet	1116-119	1556

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EXAMINER	
TODD, GREGORY G	
ART UNIT	PAPER NUMBER
2457	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/656,765	DEBONET ET AL.	
	Examiner	Art Unit	
	GREGORY G. TODD	2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *39-46,49-53 and 55-59* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *39-46, 49-53, and 55-59* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to applicant's amendment filed 30 November 2009, of application filed, with the above serial number, on 07 September 2000 in which claims 39, 49, and 55-57 have been amended. Claims 39-47, 49-53, and 55-59 are pending in the application.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 55-57 have been amended to include "A computer-readable medium embodied as an article of manufacture and encoded with software for instructing a processor". The specification currently only recites a medium as being a transmission medium (see p. 24 lines 6-7), and thus there is no "non-transitory" terminology to reflect the medium as being only non-transitory.

Applicant's amendment necessitated the new ground(s) of objection presented in this Office action.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to

a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 39-41, 43, 45-46, 49-50, 52, and 55-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitson et al (hereinafter "Hitson", 2002/0010759) in view of Leeke et al (hereinafter "Leeke", 6,587,127).

As per Claim 39, Hitson teaches a method of operating a server to provide a customized broadcast comprising:

maintaining a user profile including information relating to a preference of a user associated with the user profile (at least paragraph 54-55; user registration/ profile/ preferences);

maintaining a user listening history comprising a list identifying at least a portion of a plurality of broadcast elements previously transmitted to a user device (at least paragraph 139, 151; previously transmitted playlist providing feedback, adjusting preferences);

without selection from a user device, automatically selecting a plurality of broadcast elements comprising a song broadcast element and an advertising broadcast element based on the user profile and the user listening history (at least paragraph 11, 14, 90; advertisements and song/ playlists based on user preferences/ previous playlist); and

transmitting the plurality of broadcast elements to the user device (at least paragraph 76; eg. listen now stream).

Hitson fails to explicitly teach a time at which each broadcast element of the at least a portion of the plurality of broadcast elements was previously played by the user device. However, the use and advantages for using such a system is well known to one

skilled in the art at the time the invention was made as evidenced by the teachings of Leeke. Leeke teaches monitoring listener information for items being played by a user wherein the data include the audio item and the time the audio item is played, such preferences and behavior being used to personalize information of interest for the user (at least col. 46:19-37; 47:20-22; 48:55-60; 50:33-37). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the use of Leeke's system with Hitson as Hitson does teach the user selecting when to download content in the future by monitoring the time, thereby enabling Hitson's system at a specified time, as well as scheduling content downloads (at least paragraph 81, 149), and it would have been obvious to combine Leeke's behavior information, such as time of day listening, as this would further enhance the user profile characteristics used in Hitson to better find information of interest to the user.

As per Claim 40, Hitson fails to explicitly teach wherein the plurality of broadcast elements further comprise a weather broadcast element. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Leeke. Leeke teaches audio events including special occurrences, announcements, news and sports (at least col. 8:3-20). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the use of Leeke's special news information with Hitson as this would enhance Hitson's system as Hitson teaches such content can be audio (at least paragraph 43) and Leeke teaches the listener desiring such

information, being another form of sound recordings in addition to music, related to news, sports, etc at certain times of day, including live.

As per Claim 41. The method of claim 39 further comprising modifying the information in the user profile based on the plurality of broadcast elements that are selected automatically (at least paragraph 139, 151; adjusting preferences).

As per Claim 43. The method of claim 39 wherein the user profile includes information indicating a preference of a frequency of selection and transmission of a plurality of types of broadcast elements (at least paragraph 151; restricting frequency).

As per Claim 45. The method of claim 39 further comprising iteratively repeating without selection from the user device, automatically selecting and transmitting the plurality of broadcast elements to the user device (at least paragraph 44; continuous data stream).

As per Claim 46. The method of claim 39 wherein the plurality of broadcast elements are sequentially transmitted to the user device (at least paragraph 44; stream).

As per Claim 58. The method of claim 43 wherein the plurality of types of broadcast elements comprise at least two types of broadcast elements selected from a group consisting of: songs, introductions, news, traffic, weather, sports scores and game reports, stock prices and news, jingles and station identification, advertisements, school closings, reminders, instructions, time, date, talk/morning show, and serialized radio programs (at least paragraph 55, 151-153; content frequency of content providers, including advertisers and content creators (artists); Leeke col. 8:3-16; music, news, sports, etc).

Claims 49, 50, 52, 55-57, and 59 do not, in substance, add or define any additional limitations over claims 39-41, 43 and 45-46 and therefore are rejected for similar reasons.

5. Claims 42 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hitson and Leeke, further in view of Logan et al (hereinafter "Logan", 5,721,827).

Hitson and Leeke fail to explicitly teach without selection from the user device, automatically selecting an alert broadcast element selected from a group consisting of a weather alert broadcast element, a traffic alert broadcast element, and a stock price alert broadcast element based on the user profile; halting transmission of one of the plurality of broadcast elements to the user device prior to completion of the transmission of the one of the plurality of broadcast elements; and transmitting the alert broadcast element to the user device while the transmission of the one of the plurality of broadcast elements is halted. However, the use and advantages for using such a system is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Logan. Logan teaches interrupting programmed broadcasts for program segments such as weather (at least col. 37:14-35). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the use of Logan's weather information with Hitson and Leeke as this would enhance Hitson's system as Hitson teaches such content can be audio (at least paragraph 43) and Logan teaches the listener desiring such information, being another

form of sound recordings in addition to music, related to weather, sports, etc at certain times of day, with the interruption having a way of returning to the original broadcast.

6. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hitson and Leeke, further in view of Mackintosh et al (hereinafter "Mackintosh", 6,317,784).

Hitson and Leeke fail to explicitly teach wherein automatically selecting the plurality of broadcast elements further comprises selecting a disc jockey introduction broadcast element, and mixing the disc jockey introduction broadcast element with the song broadcast element such that the song broadcast element includes the disc jockey introduction broadcast element. However, the use and advantages for using such an audio element is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Mackintosh (at least col. 3, lines 1-16). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of DJ tracks being incorporated into Hitson and Leeke's system as Hitson teaches such content can be audio (at least paragraph 43) and DJ commentary is simply another form of audio content to be streamed and mixed as well known in the radio broadcast arts.

Allowable Subject Matter

7. Claims 44 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 39, 49, and 55 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newly cited Daum, in addition to previously cited Root et al (col. 6:5-18; automatic custom weather service delivery alerts), Drosset et al, Herz et al, Chen et al (par. 41-43; profile subsystem automatically controlling selector for may element types), Bates et al (automatic audio broadcast selection), Cliff (automatic

compilation of songs), Rosenburg et al, Srinivasan et al, Lotspiech et al, and Rouchon are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art references for relevant teachings when responding to this office action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY G. TODD whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. G. T./

Examiner, Art Unit 2457

/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457